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Allied Property & Casualty Insurance Company

THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY ALICE CAMPBELL, an
individual,

Plaintiff,

v.

NATIONWIDE MUTUAL
INSURANCE COMPANY, a mutual
corporation; ALLIED PROPERTY
AND CASUALTY INSURANCE
COMPANY, a corporation, and DOES
1 through 50, inclusive,

Defendants.

CASE NO. 8:14-cv-00091-JLS-DFM

**NOTICE OF MOTION AND
MOTION OF DEFENDANTS' FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE PARTIAL
SUMMARY JUDGMENT**

Hearing Date: October 30, 2015
Hearing Time: 2:30 P.M.
Location: Courtroom 10A
Judge: Hon. Josephine L. Staton

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on **October 30, 2015, at 2:30 P.M. in
Courtroom 10A**, of the U.S. District Court for the Central District of California,
located at 411 West Fourth Street, Santa Ana, California 92701, before Honorable
Josephine L. Staton, Defendants NATIONWIDE MUTUAL INSURANCE
COMPANY ("NMIC") and ALLIED PROPERTY AND CASUALTY
INSURANCE COMPANY ("Allied") (collectively "Defendants") will and does
hereby move this Court for Summary Judgment of Plaintiff MARY ALICE

1 CAMPBELL’S (“Plaintiff”) Complaint on file in this action, or in the Alternative,
 2 for Partial Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil
 3 Procedure (“FRCP”), of the causes of action contained therein for negligence,
 4 breach of covenant of good faith and fair dealing, intentional infliction of
 5 emotional distress, conversion, and trespass to chattel, breach of contract and
 6 Plaintiff’s claim for punitive damages.

7 This motion is made pursuant to FRCP 56 on the grounds that there is no
 8 triable issue of fact establishing Defendants breached the insurance contract on the
 9 grounds NMIC did not issue the policy or participate in investigation and
 10 adjudication of the claim, and because of Plaintiff’s material breaches of the
 11 insurance policy in failing to submit to an examination under oath and to cooperate
 12 with Allied’s investigation of the claim, causing substantial prejudice to Allied,
 13 thereby excusing any liability of Allied under the policy. The motion is also made
 14 on the ground the uncontroverted facts establish Plaintiff cannot present evidence
 15 essential to her claims for negligence, conversion, trespass to chattel, breach of
 16 covenant of good faith and fair dealing, intentional infliction of emotional distress
 17 and punitive damages, and thus, each cause of action fails as a matter of law. In
 18 the alternative, Defendants seek partial summary adjudication as to each of the
 19 claims raised herein.

20 In making the above-described motion, Defendants seeks the following
 21 specific determinations from the Court:

- 22 1. NMIC did not issue the Policy and was not involved in the
 23 investigation and adjudication of Plaintiff’s insurance claim at issue,
 24 and Plaintiff lacks sufficient evidence from which a jury could find
 25 any liability against NMIC as to each cause of action in the
 26 Complaint.

- 1 2. Plaintiff cannot meet the essential elements of Negligence and the
2 claims fails as a matter of law. It is undisputed Atterholt
3 Construction & Interiors, Inc. (“ACI”) and All County Environmental
4 & Reconstruction, Inc. (“All County”) are not agents of Defendants.
5 Even so, Allied as the insurer cannot be vicariously liable for injury or
6 damage caused by a third-party vendor’s negligence. Further,
7 negligence based on an insurer’s alleged breach of contract is not a
8 cognizable claim.
- 9 3. Plaintiff lacks sufficient evidence to satisfy the elements of
10 conversion. It is undisputed All County is not an agent of Defendants,
11 Defendants did not store or ever take possession of any of Plaintiff’s
12 personal property, and Defendants refused to release Plaintiff’s
13 personal property to her.
- 14 4. Plaintiff lacks sufficient evidence to satisfy the elements of trespass to
15 chattel. It is undisputed All County is not an agent of Defendants,
16 Defendants did not store or ever take possession of any of Plaintiff’s
17 personal property, and Defendants refused to release Plaintiff’s
18 personal property to her.
- 19 5. The undisputed facts show Plaintiff materially breached the conditions
20 of the Policy by failing to comply with her obligations and appear for
21 her second examination and under oath reasonably necessary.
22 Plaintiff also materially breached her obligations under the Policy by
23 failing to cooperate in Allied’s investigation of her claim, resulting in
24 substantial prejudice to Allied. Allied is, therefore, excused from any
25 liability under the Policy and Plaintiff cannot support a cause of action
26 for breach of contract.

1 6. Because Plaintiff cannot show a breach of contract, and, therefore,
 2 cannot support a cause of action for breach of the covenant of good
 3 faith and fair dealing as a matter of law. Notwithstanding, there is no
 4 evidence on the record supporting Allied [or NMIC, as it had no
 5 involvement in the claim] acted unreasonably or without proper cause,
 6 or otherwise consciously and deliberately frustrated or delayed
 7 Plaintiff's claim. Further, at a minimum, a genuine issue exists as to
 8 Allied's liability under the policy and whether additional policy
 9 benefits were owed to Plaintiff; thereby, precluding bad faith as a
 10 matter of law.

11 7. Plaintiff lacks evidence supporting any extreme or outrageous conduct
 12 by Defendants direct at Plaintiff, or intended to cause her severe
 13 emotional distress, or otherwise performed with reckless disregard,
 14 necessary to support a claim for intentional infliction of emotional
 15 distress.

16 8. There is no clear and convincing evidence supporting Defendants
 17 willfully, maliciously, and unreasonably withhold benefits with the
 18 intent to vex, annoy or Plaintiff in order to support a claim for
 19 punitive damages.

20 9. Summary Judgment should be entered in Defendants' favor as to the
 21 Complaint or Partial Summary Judgment should be entered in
 22 Defendants' favor as to Plaintiff's first, second, third, fourth, fifth and
 23 sixth causes of action in the Complaint and for the claim for punitive
 24 damages consistent with the foregoing

25 This Motion is based upon this Notice of Motion and Motion; the
 26 accompanying Memorandum of Points and Authorities; the Separate Statement of
 27 Uncontroverted Facts and Conclusions of Law; the Declarations of Christine M.

1 Emanuelson and Jeff Mangili; Defendants' Compendium of Exhibits and the
2 exhibits contained therein; and all pleadings, filings and records in this matter; and
3 such other and further evidence and argument as allowed at oral hearing on this
4 matter.

5 This motion is made following Defendants' attempt to meet and confer with
6 Plaintiff pursuant to L.R. 7-3 on September 4, 2015. (See Declaration of Christine
7 M. Emanuelson, Esq., ¶8).

8
9 Dated: September 18, 2015

HINES HAMPTON, LLP

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11 By: /s/: Christine M. Emanuelson
12 Marc S. Hines
13 Christine M. Emanuelson
14 Attorneys for Defendants, Allied Property &
15 Casualty Insurance Company and
16 Nationwide Mutual Insurance Company
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CERTIFICATE OF SERVICE

I hereby certify that on **September 18, 2015**, I electronically filed the foregoing document or paper with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **September 18, 2015**.



Anna Cooley

Manual Notice List

Mary Alice Campbell 1691 Orchard Dr. Newport Beach, CA
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